

Attorney at Law
Second Floor, Macaranas Building
Beach Road, Garapan
PMB 738, P.O. Box 10,000
Saipan, MP 96950
Tel: (670) 233-8600
Fax: (670) 233-5262
Attorney for Plaintiffs

O'Connor Berman Horey & Banes, LLC
Suite 201, Marianas Business Plaza, Susupe
P.O. Box 501969, Saipan, MP 96950
Tel: (670) 234-5684
Fax: (670) 234-5683
Attorney for Defendants Zeng's American Corp. and Jindong Zeng

Attorney at Law
Plata Drive Whispering Palms (Chalan Kiya)
P.O. Box 503758
Saipan, MP 96950
Tel: (670) 234-7859
Fax: (670) 234-5749
Attorney for Defendants Dongfang Trading Corp. and Xiufang Huang

KATRINA DEL GALLEGO DEMAPAN,) Civil Action No. 1:18-cv-00010
MA. GINA TIOZON, MARY JANE G.)
MUHI and EMELINDA E. SANCHEZ,)

	Plaintiffs,)	STIPULATED MOTION FOR
)	APPROVAL OF FLSA SETTLEMENT
vs.)	AND AMENDED STIPULATED
)	REQUEST TO FILE SETTLEMENT
ZENG'S AMERICAN CORP., a CNMI)	AGREEMENT UNDER SEAL OR
corporation doing business <i>inter alia</i> as)	FOR IN CAMERA REVIEW ONLY

HAPPY POKER, DONG FANG TRADING)
CORP., a CNMI corporation doing business)
inter alia as Happy Poker II, JIN DONG) **(NO HEARING REQUESTED)**
ZENG, and XIU FANG HUANG,)
)
Defendants.)

COME NOW all the parties in this case by and through their respective counsel with this Stipulated Motion to approve, without admission of liability, the terms of the parties' settlement of Plaintiffs' claims against all of the Defendants in the above-captioned matter all of which settled claims were brought pursuant to the Fair Labor Standards Act ("FLSA"), 29 U.S.C. §§ 2901 *et seq.* In order to maintain the confidentiality of the settlement, the parties are submitting herewith an Amended Stipulation (*see* ECF#43) requesting that the Court receive the parties' fully executed Settlement Agreement and two Supplemental Declarations supporting this Motion for Approval under seal or for *in camera* review only. A copy of the Settlement Agreement and Supplemental Declarations have been lodged with the Court concurrent with the filing of this Stipulated Motion and Amended Stipulated Request.

Finally, the parties also request that if the Court is inclined to hold a hearing on approval of the Settlement Agreement, such hearing also be sealed or held *in camera*.

COURT APPROVAL OF FLSA SETTLEMENT NECESSARY.

The settlement of claims under the FLSA was fairly recently at issue in a decision issued by the District Court for the Eastern District of California which is instructive. *See Kerzich v. County of Toulumne*, 355 F. Supp. 3d 1179 (E.D. Cal. 2018).¹

The *Kerzich* court articulated the role of the Court in reviewing and approving FLSA settlements as follows:

The FLSA establishes federal minimum-wage, maximum-hour, and overtime guarantees that cannot be modified by contract. Because an employee cannot waive claims under the FLSA, they may not be settled without supervision

¹ It appears that the only published decisions of this Court addressing FLSA settlement review and approval occurred in the "Garment Litigation" where the Court reviewed the terms of the global settlement, including the FLSA claims involved therein, under a separately proscribed, but similar Rule 23 class action fairness review. *See Does I v. The Gap, Inc.*, 2003 WL 22997250 (Sept. 11, 2003 DNMI); *Does I v. The Gap, Inc.*, 2002 WL 1000073 at *9 (May 10, 2002 DNMI).

1 of either the Secretary of Labor or a district court. Since neither party has
2 represented that the Secretary of Labor has approved this settlement, it falls to the
3 court to evaluate whether this settlement should be approved under the FLSA.

4 *Id.* at 1183-84 (internal quotation marks and citations omitted).

5 STANDARDS FOR APPROVING FLSA SETTLEMENT.

6 As the *Kerzich* court noted, “[while t]he Ninth Circuit has not established criteria for
7 district courts to consider in determining whether an FLSA settlement should be approved[,]
8 district courts in this circuit have frequently applied a widely-used standard adopted by the
9 Eleventh Circuit, which looks to whether the settlement is a fair and reasonable resolution of a
10 bona fide dispute.” *Id.* at 1184.

11 With regard to whether a bona fide dispute exists, courts look to whether “there are
12 legitimate questions about the existence and extent of Defendant’s FLSA liability.” *Id.* (quoting
13 *Selk v. Pioneers Memorial Healthcare Dist.*, 159 F. Supp. 3d 1164, 1172 (S.D. Cal. 2016)).

14 In evaluating the fairness, reasonableness and adequacy of an FLSA settlement, “courts
15 often apply the Rule 23 factors for assessing proposed class action settlements . . . while
16 recognizing that some of those factors do not apply because of the inherent differences between
17 class actions and FLSA actions.” *Kerzich*, 355 F. Supp. 3d at 1184 (citing *Khanna v. Inter-Con*
18 *Sec. Sys., Inc.*, 2013 WL 1193485 at *2 (E.D. Cal. Mar. 22, 2013) (Rule 23 factors such as: “the
19 strength of the plaintiffs’ case; the risk, expense, complexity, and likely duration of further
20 litigation; the risk of maintaining class action status throughout the trial; the amount offered in
21 settlement; the extent of discovery completed and the stage of the proceedings; the experience
22 and views of counsel; the presence of a governmental participant; and the reaction of the class
23 members to the proposed settlement”).
24
25
26
27

1 GLOBAL SETTLEMENT ENCOMPASSING BOTH FLSA CLAIMS AND NON-FLSA
2 CLAIMS OR IMPOSING OBLIGATIONS ON EMPLOYEES MAY BE APPROVED IF
3 ADDITIONAL CONSIDERATION IS GIVEN.

4 The Settlement Agreement in this case is broader than a purely FLSA release. It contains
5 a release in favor of Defendants encompassing all claims arising out of or relating to Plaintiffs'
6 employment with Happy Poker I/Happy Poker II (the "Happy Poker Business"), not limited to
7 FLSA claims. In addition, the Settlement Agreement contains certain obligations on Plaintiffs,
8 such as confidentiality and non-disparagement clauses,

9 Courts have approved this kind of global settlement when additional consideration is
10 given to the employees. *See, e.g., Buntin v. Square Foot Management, Co. LLC.*, Case No. 6:14-
11 cv-1394-Orl-37GJK, 2015 WL 3407866 *2-3 (M.D. Fla. May 27, 2015) (approving FLSA
12 settlement where the settlement represented a compromise and consideration in the form of a
13 neutral reference was promised by Defendant to Plaintiff in exchange for a broad general
14 release); *Weldon v. Blackwoods Steakhouse, Inc.*, No. 6:14-cv-79-Orl-37TBS, 2014 WL
15 4385593, at *1 (M.D. Fla. Sept. 4, 2014) (approving settlement containing general release and
16 non-disparagement agreement where the plaintiff received full compensation of FLSA claim and
17 \$100.00 in additional consideration for same); *Smith v. Aramark Corp.*, No. 6:14-cv-409-Orl-
18 22KRS, 2014 WL 5690488, at *4 (M.D. Fla. Nov. 4, 2014) (approving FLSA settlement
19 agreement where plaintiff received full compensation and additional consideration for general
20 release, confidentiality, and non-disparagement agreement).

21 THE SETTLEMENT AGREEMENT SHOULD BE APPROVED
22

23 The Settlement Agreement contains releases of claims under the FLSA and has other
24 provisions which are procedural in nature and would require the Court's continuing jurisdiction
25 over the matter in addition to approval of the forms of dismissal of the case. Accordingly, the
26
27

1 Court's review and approval is required in order to give efficacy to the terms thereof and to
2 approve the form of the Court's continuing jurisdiction over the Settlement Agreement.

3 As shown by the parties' previous filings in this case, there is a bona fide dispute over
4 FLSA coverage. Plaintiffs take the position that there is both individual coverage and enterprise
5 coverage. Defendants take the position that Plaintiffs worked as cashiers of a local poker parlor
6 business and therefore were not individually covered, and that there is no enterprise coverage
7 because the \$500,000.00 gross-receipt threshold amount under FLSA should be measured
8 against a poker parlor business's gross receipts under tax laws as opposed to its machines'
9 cumulative play (or "coin-in"), *see Tenorio v. Trust Territory*, 7 T.T.R. 592 (1978) (holding that
10 coins put into poker machines were not "received" by the poker parlor), and because none of
11 Defendants operated other business "related" to the Happy Poker Business that could be counted
12 towards the \$500,000.00 threshold amount under FLSA.

14 As shown by the Settlement Agreement and Supplemental Declarations lodged
15 contemporaneously with the Court, the terms of the Settlement Agreement are fair and
16 reasonable, and additional consideration is given for global settlement, such as a reciprocal
17 release from Defendants in favor of Plaintiffs and reciprocal obligations on Defendants not to
18 disparage Plaintiffs.

19 Therefore, the Settlement Agreement should be approved.

21 CONFIDENTIALITY AND *IN CAMERA* REVIEW:

23 Additionally, the parties have agreed to confidentiality of the terms of the Settlement
24 Agreement which necessitates the present request that the Court maintain that confidentiality in
25 its review and approval of those settlement terms. In requesting that the Court receive and review
26 the parties' Settlement Agreement either under seal or *in camera*, the parties acknowledge that

1 sealing of FLSA settlements in other courts of this circuit has required a showing of either “good
2 cause” or “compelling reasons” with a presumption of public access. *See, e.g., Luo v. Zynga,*
3 *Inc.*, 2013 WL 5814763 (N.D. Cal. Oct 29, 2013) (FLSA class-action settlement ordered either
4 unsealed or rejected during approval proceedings because the parties failed to articulate a proper
5 basis that would justify sealing the settlement agreement). Other courts are willing to review
6 private FLSA settlements *in camera* in order to determine fairness, reasonableness and adequacy
7 while respecting the confidentiality agreed between the parties. *See, e.g., Goudie, v. Cable*
8 *Communications, Inc.*, 2009 WL 88336 (D. Or. Jan. 12, 2009).

9
10 Here, Defendants believe that they can make this showing and have presented their
11 reasons in the Supplemental Declaration executed by Mr. Zeng and Ms. Huang. Because
12 articulation of Defendants’ reasons necessarily involves explicit references to the terms of the
13 Settlement Agreement the parties’ request herein is that it also be received under seal or
14 reviewed *in camera*.

15 This request herein for the Court is not to seal, permanently, the Settlement Agreement
16 and Supplemental Declarations. The Settlement Agreement itself contemplate scenarios where
17 further court proceedings to enforce the settlement terms would be undertaken in a public
18 manner.

19 The parties also understand that if the Court can grant the request to seal the Settlement
20 Agreement and Supplemental Declarations and proceed to determine whether to approve the
21 settlement on its terms including whether the Settlement Agreement should remain confidential
22 and sealed after the Court’s full consideration of the confidentiality clause thereof. In *Luo v.*
23 *Zynga, Inc.*, 2013 WL 5814763 (N.D. Cal. Oct 29, 2013), for example, the district court allowed
24 the parties to file their settlement agreement under seal, and then, after it held a hearing and
25 decided that sealing was not justified, gave the parties the option to withdraw the motion for
26

1 approval of settlement or to move forward with the settlement and unseal the settlement
2 agreement.

3 CONCLUSION

4 For the foregoing reasons, the Court should approve the settlement between the parties on
5 the terms contained in the Settlement Agreement lodged with the Court concurrently herewith
6 and accept filing of the Settlement Agreement and Supplemental Declarations under seal.

7 Respectfully submitted this 13th day of February, 2019.
8

9 MARK B. HANSON, ESQ.
10 *Attorney for Plaintiffs*

11 By: /s/ Mark B. Hanson
Mark B. Hanson

12 O'CONNOR BERMAN HOREY & BANES, LLC
13 *Attorneys for Defendants Zeng's American Corp. and Jindong Zeng*

14 By: /s/ Cong Nie
Cong Nie

15 Robert T. Torres, Esq.
16 *Attorney for Defendants Dongfang Trading Corp. and Xiufang Huang*

17 By: /s/ Robert T. Torres
18 Robert T. Torres